

Montana Water Court
PO Box 1389
Bozeman, MT 59771-1389
1-800-624-3270
(406) 586-4364
watercourt@mt.gov

FILED
04/05/2023
Sara Calkins
CLERK
Montana Water Court
STATE OF MONTANA
By: D'Ann CIGLER
43B-0747-R-2022
Lambert, Kathryn
5.00

MONTANA WATER COURT, YELLOWSTONE DIVISION
YELLOWSTONE RIVER ABOVE AND INCLUDING BRIDGER CREEK BASIN
BASIN 43B
PRELIMINARY DECREE

CLAIMANT: MS Hooks Farms LLC

CASE 43B-0747-R-2022

43B 33969-00

43B 36426-00

NOTICE OF FILING OF MASTER'S REPORT

This Master's Report was filed with the Montana Water Court on the above stamped date. Please review this report carefully.

You may file a written objection to this Master's Report within **10 days** of the stamped date if you disagree or find errors with the Master's findings of fact, conclusion of law, or recommendations. Rule 23, W.R.Adj.R. If the Master's Report was mailed to you, the Montana Rules of Civil Procedure allow an additional 3 days to be added to the 10-day objection period. Rule 6(d), M.R.Civ.P. If you file an objection, you must mail a copy of the objection to all parties on the service list found at the end of the Master's Report. The original objection and a certificate of mailing to all parties on the service list must be filed with the Water Court.

If you do not file a timely objection, the Water Court will conclude that you agree with the content of this Master's Report.

MASTER'S REPORT

Claim 43B 33969-00 appeared in the Preliminary Decree with the following issue remark:

THE CLAIMED POINT OF DIVERSION IS IN QUESTION. THE LOCATION OF THE HEADGATE CANNOT BE IDENTIFIED FROM AVAILABLE DATA.

Claim 43B 36426-00 appeared in the Preliminary Decree with the following issue remark:

THE POINT OF DIVERSION APPEARS TO BE INCORRECT. THE POINT OF DIVERSION APPEARS TO BE IN THE SWSESE SEC 11 TWP 1S RGE 13E SWEET GRASS COUNTY.

The issue remarks were not addressed through the objection process. The Water Court is required to resolve the issues raised by each issue remark. Section 85-2-248, MCA. Under Section 85-2-248(3), MCA, information in the claim file or other information obtained by the Court can be reviewed to determine if it provides a sufficient basis to resolve the issue raised by a remark and the Court can provide the claimant an opportunity to file additional information or evidence. On January 25, 2023 Claimant MS Hooks Farms LLC's Information To Resolve Issue Remarks was filed with a supporting affidavit and marked aerial photographs. The settlement documents are viewable in the Court's FullCourt Enterprise case management system.

APPLICABLE LAW

"All issue remarks to claims that are not resolved through the filing of an objection as provided in 85-2-233 must be resolved as provided in this section." Section 85-2-248(2), MCA.

A properly filed Statement of Claim for Existing Water Right is prima facie proof of its content pursuant to section 85-2-227, MCA. This prima facie proof may be contradicted and overcome by other evidence that proves, by a preponderance of the evidence, that the elements of the claim do not accurately reflect the beneficial use of the water right as it existed prior to July 1, 1973. This is the burden of proof for every assertion that a claim is incorrect including for claimants objecting to their own claims. Rule 19, W.R.Adj.R.

FINDINGS OF FACT

1. For claim 43B 33969-00, the Preliminary Decree states that the point of diversion is in the SESESE section 9, T1S, R13E, SWEET GRASS. The point of diversion should not be changed. The issue remark should be removed as addressed and resolved.

2. For claim 43B 36426-00, the Preliminary Decree states that the point of diversion

legal description is the SWSESE section 11, T1S, R13E, SWEET GRASS. The legal description should be the SESWSE section 11, T1S, R13E, SWEET GRASS. The issue remark should be removed as addressed and resolved.

CONCLUSION OF LAW

The information provided by the claimant is sufficient to resolve the issue remarks without evidentiary hearing. Sections 85-2-248(3) and (11), MCA.

RECOMMENDATIONS

Based upon the above Findings of Fact and Conclusion of Law, this Master recommends that the Court make the changes specified in the Findings of Fact to correct the Preliminary Decree for this Basin. A Post Decree Abstract of Water Right Claim for each claim is served with this Report to confirm the recommended changes have been made in the state's centralized record system.

ELECTRONICALLY SIGNED AND DATED BELOW

Service Via Electronic Mail:

Abigail R. Brown
Attorney at Law
Parsons Behle & Latimer
127 East Main Street, Suite 301
Missoula, MT 59802
Main: 406-317-7220
Direct: 406-317-7243
AbbyBrown@parsonsbehle.com
ecf@parsonsbehle.com

POST DECREE
ABSTRACT OF WATER RIGHT CLAIM
YELLOWSTONE RIVER, ABOVE & INCLUDING BRIDGER CREEK
BASIN 43B

Water Right Number: 43B 33969-00 STATEMENT OF CLAIM

Version: 3 -- POST DECREE

Status: ACTIVE

Owners: MS HOOKS FARMS LLC
76 GLASSTON RD
BIG TIMBER, MT 59011

Priority Date: APRIL 30, 1952

Type of Historical Right: USE

Purpose (use): IRRIGATION

Irrigation Type: FLOOD

Flow Rate: 1.21 CFS

Volume: THE TOTAL VOLUME OF THIS WATER RIGHT SHALL NOT EXCEED THE AMOUNT PUT TO HISTORICAL AND BENEFICIAL USE.

Climatic Area: 3 - MODERATE

Maximum Acres: 32.00

Source Name: UNNAMED TRIBUTARY OF YELLOWSTONE RIVER

Source Type: SURFACE WATER

Point of Diversion and Means of Diversion:

<u>ID</u>	<u>Govt Lot</u>	<u>Qtr Sec</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>
1		SESESE	9	1S	13E	SWEET GRASS

Period of Diversion: MAY 1 TO NOVEMBER 1

Diversion Means: HEADGATE

Period of Use: MAY 1 TO NOVEMBER 1

Place of Use:

<u>ID</u>	<u>Acres</u>	<u>Govt Lot</u>	<u>Qtr Sec</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>
1	24.00		SESE	9	1S	13E	SWEET GRASS
2	6.00		NESE	9	1S	13E	SWEET GRASS
3	2.00		SWSE	9	1S	13E	SWEET GRASS
Total:	<u>32.00</u>						

POST DECREE
ABSTRACT OF WATER RIGHT CLAIM
YELLOWSTONE RIVER, ABOVE & INCLUDING BRIDGER CREEK
BASIN 43B

Water Right Number: 43B 36426-00 STATEMENT OF CLAIM

Version: 3 -- POST DECREE

Status: ACTIVE

Owners: MS HOOKS FARMS LLC
76 GLASSTON RD
BIG TIMBER, MT 59011

Priority Date: FEBRUARY 19, 1951

Type of Historical Right: USE

Purpose (use): STOCK

Flow Rate: A SPECIFIC FLOW RATE HAS NOT BEEN DECREED BECAUSE THIS USE CONSISTS OF STOCK DRINKING DIRECTLY FROM THE SOURCE, OR FROM A DITCH SYSTEM. THE FLOW RATE IS LIMITED TO THE MINIMUM AMOUNT HISTORICALLY NECESSARY TO SUSTAIN THIS PURPOSE.

Volume: THIS RIGHT INCLUDES THE AMOUNT OF WATER CONSUMPTIVELY USED FOR STOCK WATERING PURPOSES AT THE RATE OF 30 GALLONS PER DAY PER ANIMAL UNIT. ANIMAL UNITS SHALL BE BASED ON REASONABLE CARRYING CAPACITY AND HISTORICAL USE OF THE AREA SERVICED BY THIS WATER SOURCE.

Source Name: SPRING, UNNAMED TRIBUTARY OF YELLOWSTONE RIVER

Source Type: GROUNDWATER

Point of Diversion and Means of Diversion:

<u>ID</u>	<u>Govt Lot</u>	<u>Qtr Sec</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>
1		SESWSE	11	1S	13E	SWEET GRASS

Period of Diversion: JANUARY 1 TO DECEMBER 31

Diversion Means: LIVESTOCK DIRECT FROM SOURCE

Period of Use: JANUARY 1 TO DECEMBER 31

Place of Use:

<u>ID</u>	<u>Acres</u>	<u>Govt Lot</u>	<u>Qtr Sec</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>
1			SWSESE	11	1S	13E	SWEET GRASS